

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC

Employer

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 98<sup>1</sup>

Petitioner

Case 04-RC-149204

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

A union which seeks to represent a unit encompassing employees at multiple facilities operated by a single employer has the initial burden to demonstrate that the employees are an identifiable group and share a community of interest. Where the unit being sought is limited to employees at a single facility, on the other hand, it is presumptively appropriate, and the employer, if it wishes to include employees at additional facilities, has the burden to show that the petitioned-for workers have been effectively merged into the broader grouping and have lost their separate identity. In this case, the Union, International Brotherhood of Electrical Workers Local 98, has petitioned to represent in a single unit of residential sales representatives who work for the Employer, Comcast Cable Communications Management LLC, at two facilities in Trevose and Philadelphia, Pennsylvania. Alternatively, the Union has indicated that it is willing to represent the sales representatives in two separate units, each limited to employees at one of the facilities. The Employer insists that the smallest appropriate unit must include sales representatives in Trevose, Philadelphia and a third facility which it operates in Wallingford, Pennsylvania.

A hearing officer of the Board held a hearing in this matter, and the parties have submitted briefs. Based on the record and the parties' submissions, I will, as I explain in greater detail below, find that while employees in Trevose and Philadelphia are an identifiable group, they do not share a community of interest separate from the sales representatives employed in

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<sup>1</sup> The names of the Employer and the Petitioner appear as amended at the hearing.

Wallingford. As a consequence, I will find that a multi-facility unit consisting of the sales representatives in Trevoise and Philadelphia would not be appropriate. However, I will also find that the Employer has failed to rebut the presumptive appropriateness of separate units limited to employees in Trevoise and employees in Philadelphia, and that the record evidence does not establish that the employees in these separate facility units have been effectively merged into a broader three- facility grouping. I shall order elections in separate units of sales representatives employed in Trevoise and in Philadelphia.

## **II. THE EMPLOYER'S OPERATIONS**

The Employer provides video, high-speed data, home security and telephone services to residential and business customers. As part of its operation, the Employer employs residential sales representatives, called DSRs by the Employer, who visit potential customers in an effort to sell the Employer's services.<sup>2</sup> The Employer's sales operation is divided into regions and then into sales areas within each region. The employees at issue in this case are located in the Employer's Freedom Region which encompasses New Jersey, Eastern Pennsylvania and Northern Delaware.

Five sales areas are included in the Freedom Region. Employees in the unit sought by Petitioner are employed in the Freedom Philadelphia sales area which includes the City of Philadelphia and adjacent suburban Delaware County, Pennsylvania. Anthony Swain currently serves as the manager of Freedom Philadelphia. Six supervisors report directly to Swain, and approximately 68 sales representatives report to the supervisors.

There are three facilities located in the Freedom Philadelphia sales area - Wallingford, Trevoise and Parkside. The Parkside facility is located in Philadelphia between Wallingford which is south of Philadelphia and Trevoise which is just north of the City. The distance from Wallingford to Parkside is 14 miles. Trevoise is 20 miles from Parkside. Wallingford is roughly 40 miles from Trevoise.<sup>3</sup>

Sales representatives assigned to the Wallingford facility sell the Employer's product in Delaware County. One supervisor, Theresa Wright, works in Wallingford. 13 sales representatives report to Wright.

Two facilities – Parkside and Trevoise – employ sales representatives who sell the Employer's product inside the City of Philadelphia. The Parkside and Trevoise facilities do not service discrete areas within the City, and representatives assigned to the two facilities might sell services in the same areas. However, only one representative is assigned to an area at any given time, and representatives from the two facilities are not assigned to handle the same area

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<sup>2</sup> DSRs are classified as either DSR-1 or DSR-2 based on their level of experience. DSR-1s are newly hired employees in their first year of employment. All other sales representatives are classified as DSR-2s.

<sup>3</sup> The Employer presented testimony at the hearing about the distance between Parkside and Trevoise and Parkside and Wallingford (Tr. 81). Google maps indicates that Wallingford is roughly 40 miles from Trevoise.

simultaneously.<sup>4</sup> Sales representatives from Parkside and Trevoise are not assigned to customers in Delaware County, and Wallingford representatives are not assigned customers in Philadelphia.

Three supervisors, James Jackson, Antonio Walker and Matthew LeClair, work in Parkside managing 11, 13 and 10 sales representatives, respectively. Two supervisors, Laurence Koerwer and Abdulazim Lavingia, are assigned to Trevoise. 10 sales representatives report to Koerwer. Lavingia supervises 11 representatives. As I noted above, the supervisors report directly to area manager Swain. No single individual has overall responsibility for the Parkside and Trevoise locations. None of the supervisors in Wallingford, Parkside or Trevoise manage employees assigned to one of the other facilities.

### **III. THE MULTI-FACILITY UNIT**

#### **A. APPLICABLE LEGAL PRINCIPALS**

As I noted in the Introduction, Petitioner seeks to represent the 55 sales representatives who work at the Employer's Parkside and Trevoise locations in a combined unit. The Employer contends this unit is inappropriate and insists that the 11 sales representatives employed in Wallingford must be added in. Since the multi-facility unit being sought is not presumptively appropriate, the initial burden is on Petitioner to demonstrate that the employees in the unit are identifiable as a group and share a community of interest distinct from sales representatives at other Employer facilities. *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip. op. at 10-13 (2011). In determining whether a multi-location unit is appropriate, the Board examines factors such as similarity in employee skills, duties and working conditions; centralized control of management and supervision; functional integration including employee interchange; geographical separation; and collective bargaining history, if any. *Macy's West, Inc.*, 327 NLRB 1222, 1223 (1999). The Board will also consider whether the proposed unit corresponds to administrative or operational lines drawn by the Employer. *Alamo Rent-A-Car*, 330 NLRB 897, 898-99 (2000). See also, *The Neiman Marcus Group, Inc.*, 361 NLRB No. 11, slip. op. at 3 (2014). The unit being sought need only be an appropriate unit; it does not have to be the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). If Petitioner is able to show that the unit it seeks is appropriate, the burden shifts to the Employer to demonstrate that any employees it wishes to add share an overwhelming community of interest with unit workers. *Specialty Healthcare and Rehabilitation Center of Mobile*, supra.

#### **B. ANALYSIS**

The unit sought by Petitioner consists of an identifiable group of employees, i.e., all residential sales representatives employed at the Parkside and Trevoise locations. The question is whether this group of employees has a community of interest separate from the residential sales representatives who work at the Employer's Wallingford facility. Evaluating all the factors normally considered by the Board in this situation, I find that they do not.

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<sup>4</sup> Although representatives from the two facilities are not simultaneously *assigned* to the same area, they do sometimes voluntarily work together in a particular area. I explain how this works in greater detail below.

**Employer organization.** The unit sought by Petitioner does not correspond with any segment of the Employer's organizational structure. The Employer's residential sales force is assigned to separate facilities which are grouped into sales areas. Petitioner's unit is not limited to sales representatives at a single facility. But, on the other hand, it does not include all of the representatives in a sales area. The Parkside and Trevoise facilities are not a separate unit within the Employer's organization. They are part of an organizational component which also includes sales representatives employed in Wallingford. While not necessarily fatal, the failure of Petitioner's unit to correspond to any segment of the Employer's operation definitely weighs against finding it appropriate. See, *The Neiman Marcus Group, Inc.*, supra

**Employee skills and duties.** The sales representatives in Parkside and Trevoise do not perform distinct duties or possess unique skills. They do the same job as the representatives in Wallingford. There is no basis on which to distinguish the sales representatives at the three facilities based on their skills and duties.

**Working conditions.** Employees at Parkside and Trevoise receive the same benefits as employees in Wallingford, work the same hours and are subject to the same rules. The compensation scheme for sales representatives at Parkside and Trevoise is, however, slightly different from the scheme applied to representatives in Wallingford. Sales representatives at all three locations are paid a combination of base salary and commission, and the base salary is the same - \$28,000 per year – at each location. Further, the commission rate at all three locations is set with the expectation that it will yield \$52,000 in commissions on an annual basis and provide sales representatives with a total annual income of approximately \$80,000.

The difference is in the commission rate and accompanying sales goals. The Employer calculates that it is more difficult for sales representatives in Wallingford to generate new customers because there are fewer homes without cable service in the suburban areas which the Wallingford facility handles and the residences are further apart. As a consequence, the representatives in Wallingford have a more favorable commission rate and lower sales goals than the representatives at Parkside and Trevoise who work inside the City of Philadelphia and who share the same less favorable rate and higher sales targets. And, this difference in the commission rates and sales goals at Parkside/Trevoise is a factor which distinguishes sales representatives at those locations and which arguably supports finding a separate unit of Parkside/Trevoise representatives appropriate.

On the other hand, the significance of this factor is minimized by the fact that the overall amount of compensation received by sales representatives is the same at Wallingford, Parkside and Trevoise, and the working conditions at the three locations are otherwise the same. On balance, while the difference in commission rates and sales goals has some significance, I find that it does not weigh strongly in favor of finding a Parkside/Trevoise unit appropriate.

**Supervision.** The Employer's supervisors manage sales representatives at the facility level. They report to Area Manager Swain who has responsibility for all three locations in Freedom Philadelphia. There is no separate supervision of a combined group of Parkside/Trevoise sales representatives, and this factor does not support finding a Parkside/Trevoise unit appropriate. See, *Bashas', Inc.*, 337 NLRB 710, 711 (2002).

**Functional integration.** Functional integration generally refers to employees at separate facilities participating in various stages of an employer's operation so that they constitute integral parts of a single work process. See, *Budget Rent A Car Systems*, 337 NLRB 884, 885 (2002). The Parkside, Trevoise and Wallingford facilities appear to operate as distinct units, and there is no evidence of employees at one of the facilities performing functions for one of the other facilities.

The Parkside and Trevoise facilities do, however, service the same sales territory. Every month, supervisors give each sales representative a list of 50 – 65 potential customers to contact. The sales representative retains these contacts for a period of 60 days after which they are turned back to the Employer. Only one sales representative has access to a particular group of customers at any given time.

The sales representatives in Wallingford are given lists of customers who reside in Delaware County, Pennsylvania. Representatives at Parkside and Trevoise receive lists of customers who live in the City of Philadelphia. The Parkside/Trevoise representatives do not have access to customer lists for Delaware County, and the representatives in Wallingford do not have access to customer lists for Philadelphia.

The Parkside and Trevoise sales representatives do not, however, handle discrete areas within Philadelphia and they work from a common list of potential customers. Thus, representatives from the two facilities can work in the same areas, and this might be viewed as a factor in favor of finding a combined Parkside/Trevoise unit appropriate. But, since only one sales representative has access to a particular group of customers at any given time, sales representatives from the two Philadelphia facilities would not work in the same areas simultaneously, minimizing the possibility for contact.

Further, sales representatives are not limited to the Employer-provided customer lists when making sales. They can receive referrals from friends or prior customers, and receipt of such referrals might allow Wallingford sales representatives to sell services to customers in Philadelphia or Trevoise/Parkside representatives to access customers in the suburbs. The Employer's territories are porous, and the ability of representatives to make sales outside their home areas tends to minimize the significance of the assigned sales areas in evaluating unit appropriateness. In short, while the assignment of Parkside and Trevoise sales representatives to work in the same geographic area is a distinguishing factor, I find that its significance is limited and that it does not provide strong support for finding a combined Parkside/Trevoise unit appropriate.

**Interchange.** In 2013, a supervisor and his team of sales representatives were permanently transferred from Trevoise to Parkside. Other than this, there is no evidence of sales representatives being permanently or temporarily transferred between the three facilities involved in this case. Thus, there is little evidence of interchange. And, the only interchange which has taken place involved permanent transfers, which the Board views as a less significant indicator of community of interest than the temporary movement of employees between locations. *Bashas', Inc.*, supra. at fn. 7. The absence of interchange, and in particular the

absence of any significant temporary interchange between the Parkside and Trevoise facilities, cuts against finding a Parkside/Trevoise unit appropriate.

Although Petitioner was unable to show any significant permanent or temporary transfer of sales representatives between the Parkside and Trevoise facilities, it did produce some evidence that employees from the two locations do on occasion work together. The Employer does not assign sales representatives to work in teams, but it allows representatives to partner if they wish to do so. Parkside sales representative Joseph McGauley testified that he works with “a couple of different guys” from the Trevoise facility and does so on average two times per week. Trevoise representative William Sheerin confirmed that he goes out with McGauley about once per week. There is nothing in the record indicating whether, or how often, sales representatives at Parkside and Trevoise other than McGauley and Sheerin work together. There is also no evidence that Parkside/Trevoise sales representatives partner with representatives from Wallingford although there is nothing that would prevent such arrangements.

The McGauley/Sheerin testimony does show that there is regular contact between a small number of Parkside and Trevoise employees, but there is no evidence that significant numbers of employees at the two facilities are involved. Further, the Employer does not assign representatives from the two facilities to work together. Any partnering is initiated by the sales representatives themselves, and the Board does not view interchange made for the convenience of employees as having much weight in determining the scope of the appropriate unit. See, *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988), and *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980). In sum, I find that the limited degree of contact between Parkside and Trevoise sales representatives which results from voluntary partnering by a small number of workers is not a significant factor in determining if a Parkside/Trevoise unit would be appropriate.

**Geography.** The Wallingford facility is actually slightly closer to Parkside than the facility in Trevoise. The distance from Wallingford to Parkside is 14 miles, while Trevoise is situated about 20 miles from Parkside. Parkside and Trevoise do not constitute a distinct geographic grouping which might justify combining sales representatives at the two facilities in a unit separate from the representatives in Wallingford. See, *Bashas', Inc.*, supra.; *Stormont-Vail Healthcare*, 340 NLRB 1207, 1208 (2003).

**Bargaining history.** There is no evidence of any history of bargaining involving sales representatives at any of the facilities involved in this proceeding, and no basis on which to find that bargaining history supports finding a Parkside/Trevoise unit appropriate.

**Conclusion.** In sum, the majority of factors indicate that sales representatives in Parkside and Trevoise do not share a community of interest separate from representatives in Wallingford. Of particular significance is the failure of a combined Parkside/Trevoise unit to correspond to any administrative segment of the Employer's organization coupled with the absence of any separate supervision of sales representatives in Parkside and Trevoise, the lack of significant interchange of employees between the two facilities and the failure of the Parkside and Trevoise facilities to constitute a distinct geographic segment of the Employer's organization which might justify carving them out as a separate unit. There is some contact between Parkside and Trevoise sales representatives, they operate in the same geographic area separate from

representatives in Wallingford and their commission rate is different from the rate in Wallingford, but I find these factors insufficient to mark the Parkside and Trevoise sales representatives as a separate grouping of employees distinct from the representatives in Wallingford. A unit combining the sales representatives employed at the Employer's Parkside and Trevoise facilities would constitute an arbitrary segment of the Employer's operations and is not appropriate for purposes of collective bargaining. See, *Bashas', Inc.*, supra.; *Alamo Rent-A-Car*, supra. at 898-99; *Macy's West, Inc.*, supra. at 1223.

#### IV. THE SINGLE FACILITY UNITS

##### A. APPLICABLE LEGAL PRINCIPLES

Assuming its preferred Parkside/Trevoise unit was found inappropriate, Petitioner indicated at the hearing that it was willing to proceed to elections in separate units consisting of the residential sales representatives in Parkside and the residential sales representatives in Trevoise. The Employer argued at the hearing that these single facility units were not appropriate. In the Employer's view, the smallest appropriate unit must include all of the sales representatives in its Freedom Philadelphia sales area. This would encompass sales representatives working in Parkside, Trevoise and Wallingford.

Single facility units are presumptively appropriate. A party opposing such a unit has a heavy burden to show that the employees at separate facilities have been so functionally integrated or effectively merged into a larger group of workers that they have lost their separate identity. In deciding whether the single facility presumption has been rebutted, the Board considers many of the same factors which I referred to above in evaluating whether Petitioner's proposed two-facility unit was appropriate. The relevant factors include: whether there is centralized control over daily operations and labor relations; the extent of local management's autonomy in handling day-to-day operations and supervising employees' day-to-day work; similarity of employee skills, functions and working conditions; the extent of employee interchange; the distance between locations; and bargaining history, if any. *Rental Uniform Service*, 330 NLRB 334, 335 (1999); *J & L Plate, Inc.*, 310 NLRB 429 (1993).

The Board has not made clear whether the standards announced in *Specialty Healthcare and Rehabilitation Center of Mobile*, supra., apply in determining the appropriateness of single facility units. The *Specialty Healthcare* standards are applicable to the determination of unit scope questions, and issues regarding the appropriateness of single as opposed to multi-facility units involve questions of unit scope. It would, therefore, appear as though the *Specialty Healthcare* framework might be appropriately applied where the appropriateness of a single facility unit is questioned. However, since the Board has not indicated whether *Specialty Healthcare* governs in this situation, I will analyze this case under both the Board's traditional standards and using the *Specialty Healthcare* framework.

Under the *Specialty Healthcare* framework, the initial burden is on Petitioner to show that the unit it seeks encompasses an identifiable group of employees who share a community of interest. Where a single facility unit is sought, the presumption of appropriateness would

presumably be sufficient to satisfy this burden. And, once Petitioner has shown that it seeks employees who share a community of interest, the burden shifts to the Employer to demonstrate that any additional employees it wishes to add share an overwhelming community of interest with employees in Petitioner's unit. An overwhelming community of interest exists only where there is no legitimate basis on which to exclude the additional employees because traditional community of interest factors overlap almost completely. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip. op. p. 3 (2011).

## **B. ANALYSIS**

Applying the Board's traditional mode of analysis first, I find that a review of the relevant factors shows the Employer has not established that sales representatives in Parkside and in Trevoise have been effectively merged into a unit encompassing all representatives in the Freedom Philadelphia sales area and has failed to rebut the presumption that separate facility units limited to sales representatives in Parkside and in Trevoise are appropriate.

**Local supervisory autonomy and centralized control of labor relations.** The residential sales representatives are managed by supervisors who work at the locations to which the representatives are assigned. Theresa Wright supervises the sales representatives who work in Wallingford. James Jackson, Antonio Wright and Matthew LeClair supervise representatives in Parkside. The sales representatives in Trevoise report to Laurence Koerwer and Abdulazim Lavingia. None of the sales representatives are supervised by a supervisor stationed at a location different from the one to which the representatives are assigned.

Supervisors meet with the sales representatives included on their teams on a monthly basis to assign potential customers to the representatives. Sales representatives are required to visit the facility to which they are assigned at the start of each work day to check in with their supervisors. During these daily meetings, the supervisors review the representatives' activities on the previous day and discuss whether the representatives are meeting their sales goals. The supervisors also conduct bi-weekly "huddles" with all of the sales representatives on their teams to provide product training. Supervisors will occasionally accompany sales representatives into the field to observe how the representatives are performing their jobs and to make suggestions for improvement. Sales representatives contact their supervisors to report absences and seek approval for time off.

Supervisors interview applicants for employment and make recommendations to Area Manager Swain who makes final decisions on hiring. An applicant might be interviewed by a supervisor in one facility and then assigned to work at a different location. Supervisors also make recommendations regarding discipline and discharge which are reviewed by Swain and managers in the Employer's Human Resources Department. Supervisors prepare mid-year and annual evaluations of the representatives on their teams which are forwarded to Swain for approval. The record does not indicate what, if any, impact the evaluations have on representatives' employment.

Area Manager Swain is required to visit each of the facilities within his area on a weekly basis. Swain has only served as Area Manager since November 2014. His predecessor, Richard



Tosti, testified that he held joint monthly meetings attended by all of the sales representatives in the area. Appearing as witnesses for Petitioner, sales representatives McGauley and Sheerin conceded that Tosti held occasional meetings which were attended by sales representatives from all three facilities in the Freedom Philadelphia sales area, but disputed Tosti's claim that the meetings were held on a monthly basis. Swain has held only one joint meeting since assuming the Area Manager position.

The Board has held that some centralized control over labor relations policies and procedures is not inconsistent with a finding that there exists sufficient local autonomy to support the single location presumption. *D & L Transportation*, 324 NLRB 160, 161 (1997). Where local supervision exercises control over day-to-day matters and has input into decisions regarding hiring and discipline, the fact that higher level managers must approve some personnel decisions is not sufficient to support a finding that the interests of the separate facility employees have been merged with those of employees at other locations so that only a combined unit is appropriate. *Retail Uniform Service, Inc.*, supra. at 335-36; *First Security Services Corp.*, 329 NLRB 235, 236-37 (1999); *Bowie Hall Trucking*, supra.; *Penn Color, Inc.*, supra.

In this case, day-to-day supervision is plainly provided by supervisors at the individual facilities. The sales representatives have daily contact with their supervisors, receive regular instruction and training from the supervisors and go to the supervisors if they need time off. The supervisors are involved in the hiring, discipline and evaluation of the sales representatives even if they do not have the final say, and contact between the representatives and Area Manager Swain appears limited. Even if Swain visits each facility at least one time per week and conducts occasional meetings with sales representatives, the vast bulk of supervision is still provide by on-site supervisors, and the Employer has certainly not demonstrated that day-to-day supervision of the sales representatives is done solely by the Area Manager. *Carter Hawley Hale Stores*, 273 NLRB 621, 622-23 (1984).

Further, there is no evidence of supervisors at one location exercising authority over sales representatives at another facility. This case does not present the sort of cross-supervision which might justify a finding that the interests of sales representatives at different locations have been effectively merged. Cf. *Budget Rent A Car Systems*, supra. It is true that there are no overall managers at the Parkside and Trevoise locations and no level in the corporate hierarchy between the individual supervisors at these locations and Area Manager Swain. But, this does not negate the fact that the sales representatives in Parkside and Trevoise are managed on a daily basis by on-site supervisors who exercise significant autonomy in managing the representatives' regular activities. Given this level of local autonomy, there is no basis on which to find that the sales representatives at the individual locations have lost their separate identities, and the existence of day-to-day supervision at the facility level tends to support a finding that separate facility units are appropriate.

**Skills, functions and working conditions.** As I noted above in analyzing Petitioner's request for a multi-facility unit, sales representatives at all three locations in the Freedom Philadelphia sales area have the same skills, perform the same functions, enjoy the same benefits and are subject to the same work rules. The compensation scheme under which the representatives at different facilities work is also similar although, as I noted previously, the

commission rate at Parkside and Trevoise is different from the rate applied at Wallingford. Sales representatives at all three facilities wear the same uniforms.

In short, the sales representatives in Parkside, Trevoise and Wallingford work under similar conditions, and this factor lends some support to a finding that they share a community of interest and could probably be included in the same unit. The Board has, however, indicated that the existence of common duties and shared terms of employment is not sufficient to rebut the presumption in favor of finding single facility units appropriate where other factors indicate that the employees at the individual facilities have not lost their separate identities. *Rental Uniform Services, Inc.*, supra. at 336.

**Interchange.** The Board has described this factor as “critical” to a determination of whether the single facility unit presumption has been rebutted. *First Security Services Corp.*, supra. at 236. Significant interchange of employees between facilities on a regular basis indicates that the employees are viewed, and are likely to view themselves, as part of a single multi-facility grouping rather than as separate facility units. An absence of interchange, on the other hand, suggests that the employees at separate facilities are distinct groups and negates any claim of merger.

I have already described the evidence of interchange here in some detail during my consideration of whether Petitioner’s requested two-facility unit was appropriate. In 2013, a supervisor and an accompanying team of sales representatives were permanently transferred from the Trevoise facility to the Parkside location. Other than this, there is no evidence of any permanent or temporary transfers of sales representatives between the three facilities at issue in this case. A few sales representatives in Parkside and Trevoise do sometimes work together, but this is by their own choice. The Employer does not assign representatives from one location to work with representatives at another site.

The 2013 permanent transfers appear to have been a one-time event, and nothing in this record indicates the regular movement of employees between facilities which might support a finding that the sales representatives at the separate facilities in the Freedom Philadelphia area are treated as a merged group. Further, the Board has noted that permanent transfers are not as significant as the temporary movement of employees between facilities in determining whether workers have been merged into a single unit. *Red Lobster*, 300 NLRB 908, 911 (1990). As for sales representatives in Parkside and Trevoise working together, there is no evidence that more than a handful of employees are involved and the collaboration is by choice of the employees. The Board has, as I noted above in analyzing Petitioner’s requested multi-facility unit, stated that “interchange made at the convenience of employees is not entitled to much weight in determining the scope of the appropriate unit.” *Bowie Hall Trucking*, supra. at 43. In short, the level of interchange here does not indicate that the separate facility units have been effectively merged, and this “critical factor” weighs against finding that the single facility unit presumption has been rebutted.

**Geographic separation.** The three facilities at issue in this case are located some distance apart. Trevoise is 20 miles from Parkside and roughly 40 miles from Wallingford. The distance between Parkside and Wallingford is 14 miles. The significant distances between the

three locations supports a finding that separate units limited to employees at each location are appropriate.

**Bargaining history.** There is no history of bargaining on a multi-facility basis, a factor which tends to support a conclusion that separate units are appropriate.

**Conclusion applying the Board's traditional factors.** The majority of the factors traditionally considered by the Board support finding that the Employer has not rebutted the presumptive appropriateness of single facility units limited to sales representatives in Trevoise and at Parkside. Day-to-day supervision is provided by supervisors whose authority is limited to a single location. There is no evidence of significant interchange of sales representatives between facilities. The sites are geographically separate, and there is no history of multi-facility bargaining. The existence of common duties and shared working conditions does suggest that a single multi-facility unit might be appropriate, but I find this factor insufficient standing alone to justify a conclusion that the separate facility employees have been effectively merged into a single grouping. Under the Board's traditional test, separate facility units are appropriate.

**Specialty Healthcare.** The result would be the same if the Board's *Specialty Healthcare* framework were applied. The presumptive appropriateness of single facility units would be sufficient to satisfy Petitioner's initial burden to show that sales representatives in Trevoise and at Parkside share a community of interest. To rebut this showing, the Employer, as the party asserting that additional workers must be added to these presumptively appropriate units, would have to demonstrate that the Trevoise and Parkside sales representatives share an overwhelming community of interest with representatives at the other facilities within the Freedom Philadelphia sales area and that the community of interest factors overlap almost completely.

As my recently concluded review of the criteria traditionally considered by the Board in single facility unit situations indicates, most community of interest of factors in this case support finding single facility units appropriate. At the very least, there are some factors – separate supervision, geographic separation and lack of interchange – which do not overlap. The Employer has not satisfied its burden under *Specialty Healthcare*, and application of the *Specialty Healthcare* test, like use of the Board's traditional standards, supports finding separate facility units appropriate.

**The Employer's due process claim.** Although the Employer indicated at the hearing that it viewed separate facility units as inappropriate, its post-hearing Brief did not directly address this issue. Instead, the Employer argues that finding separate facility units appropriate would violate its due process rights because Petitioner failed to indicate a willingness to proceed to an election in such units until near the conclusion of the hearing.

It is well-settled that the Board has discretion to select an appropriate unit different from alternatives proposed by the parties, and I could find separate facility units appropriate even if Petitioner had never suggested its willingness to go to an election in such units. *Boeing Co.*, 337 NLRB 152, 153 (2001). However, Petitioner did propose single facility units as an appropriate alternative at the hearing, and nothing prevented the Employer from asking for an opportunity to present additional evidence on the appropriateness of such units if it believed the record did not

already contain sufficient facts to permit a decision on the issue. The Employer was not precluded from presenting its case.

Further, as my recitation of factors above indicates, the evidence relevant to a determination of whether Petitioner's proposed multi-facility unit was appropriate is nearly identical to the evidence relevant to a decision on the appropriateness of single facility units in Parkside and Trevoise. Relevant considerations in both cases included the skills and duties of residential sales representatives at the three locations within the Employer's Freedom Philadelphia sales area, the supervision of sales representatives at the three facilities, interchange of employees among the facilities, the geographic separation of the facilities, and the absence of any history of bargaining. In litigating the appropriateness of Petitioner's multi-facility unit, the Employer effectively litigated the issue of whether single facility units would be appropriate, a fact which likely accounts for the Employer's failure to seek leave to introduce additional testimony when Petitioner declared its willingness near the end of the hearing to proceed to an election in single facility units.<sup>5</sup>

In short, the Employer was not denied a chance to litigate the appropriateness of single facility units at the hearing and was not prejudiced by the fact that Petitioner did not indicate its willingness to go to an election in such units until close to the conclusion of the hearing. There was no denial of due process, and I shall order elections in separate units of residential sales representatives at the Employer's Trevoise and Parkside locations.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. Petitioner is a labor organization that claims to represent certain employees of the Employer.

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<sup>5</sup> The Employer's Brief supports its due process claim by citing to cases in which the Board refused to find unfair labor practices because the alleged violations had not been alleged in pre-hearing Complaints. Since I am not finding unlawful conduct, the considerations which applied in these unfair labor practice proceedings are not relevant here. It is worth noting, however, that the Board will find unalleged unfair labor practices where they are closely connected to the subject matter of a Complaint and have been fully litigated at the hearing. *Golden State Foods Corp.*, 340 NLRB 382 (2003). And, questions of whether single facility or multi-facility units are appropriate are closely related, and, as I note above, the parties in this case effectively litigated the appropriateness of single facility units in Trevoise and Parkside even if that issue was not explicitly raised by Petitioner at the outset of the hearing.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time DSR 1 and DSR 2 employees employed by Comcast Cable Communications Management LLC at its Trevoise, Pennsylvania office; **excluding** all other employees, managers, guards and supervisors as defined in the Act.

All full-time and regular part-time DSR 1 and DSR 2 employees employed by Comcast Cable Communications Management LLC at its Parkside, Pennsylvania office; **excluding** all other employees, managers, guards and supervisors as defined in the Act.

## **VI. DIRECTION OF ELECTIONS**

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Electrical Workers, Local 98**. The date, time, and place of the elections will be specified in the Notices of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; (2) employees engaged in a strike who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of

voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election separate eligibility lists containing the full names and addresses of all the eligible voters in the units found appropriate. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make it available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Suite 710, Philadelphia, Pennsylvania 19106 on or before **Tuesday, May 5, 2015**. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlr.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the lists will continue to be placed on the sending party. Since the lists will be made available to all parties to the election, please furnish a total of 3 copies of each list, unless the lists are submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the date of the elections. Failure to follow the posting requirement may result in additional litigation if proper objections to the elections are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Tuesday, May 12, 2015, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>6</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at **www.nlrb.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

**DATED:** April 28 2015

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**DENNIS P. WALSH**

Regional Director, Region Four  
National Labor Relations Board  
615 Chestnut Street, Suite 710  
Philadelphia, PA 19106

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<sup>6</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.